

What the South Dakota v. Wayfair, Inc. decision may mean for your business

Understanding Economic Nexus



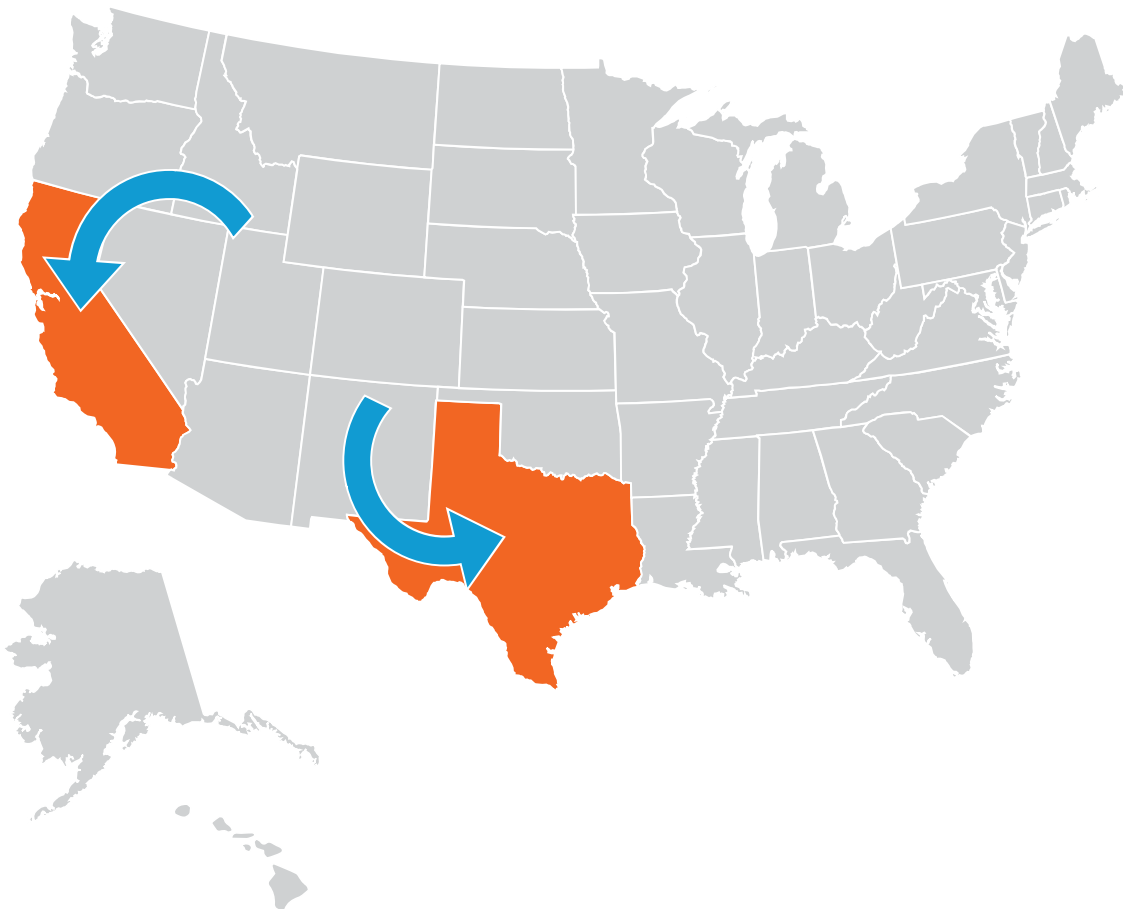


Understanding where your company has nexus is an integral part of your sales tax compliance strategy because nexus dictates where your business is required to collect and remit tax. There are a lot of business activities that can cause your business to have nexus, but one is getting a lot of attention from states right now because it was at the forefront of the Supreme Court of the United States (SCOTUS) case *South Dakota v. Wayfair, Inc.* (Wayfair): **economic nexus**.

TO START, LET'S DEFINE THE CONCEPT OF NEXUS

Sales tax nexus is the connection between a seller and a state that requires the seller to collect and remit tax on sales made in that state. Historically, nexus was based on physical presence. After the Wayfair decision, nexus can now also be established based on economic activity.

If you have sales tax nexus in California and Texas, for example, you must collect and remit sales tax in California and Texas. Unfortunately, you can't just figure out where you have nexus today and forget about it – you must closely monitor nexus on an ongoing basis because it is constantly changing, and the business activities that can trigger your business to have nexus can vary from state to state.





WHAT IS ECONOMIC NEXUS?

Economic nexus is a tax collection obligation imposed on companies based solely on a certain level of economic activity within a state. Unlike nexus that's based on physical presence, economic nexus is based entirely on sales revenue, transaction volume, or a combination of both. Like many sales tax laws, economic nexus criteria vary by state.

WHAT WAS THE SOUTH DAKOTA V. WAYFAIR, INC. CASE ABOUT, AND HOW DOES IT RELATE TO ECONOMIC NEXUS?

In 1992, the Supreme Court ruled – in *Quill Corp. v. North Dakota* (Quill) – that a state can't force a business to collect sales tax unless it has a physical presence in the state. The state of South Dakota petitioned the Supreme Court of the United States to overturn that long-standing rule.

The June 21, 2018, ruling in *South Dakota v. Wayfair, Inc.* overturned Quill's physical presence rule. States now have a path to tax remote sellers that have no physical presence in the state. In *Wayfair*, SCOTUS found the remote retailers' "economic and virtual contacts" with South Dakota to be a sufficient basis for establishing nexus.

It's important to note that the SCOTUS ruling adds economic nexus to the existing list of activities that create nexus, and it does not impact any other state nexus laws. Nexus is still enforced when companies have a physical presence in another state.

Furthermore, while *Wayfair* removes Quill's physical presence limitation, it doesn't give blanket approval to all economic nexus laws, which vary by state. The South Dakota law itself has been sent back to state court "for further proceedings not inconsistent with this opinion." Any nexus law determined to be inconsistent with the ruling could be vulnerable to a legal challenge.



IMPORTANT NOTE

This document explains **economic nexus**, which is what the Supreme Court authorized in *South Dakota v. Wayfair, Inc.* However, there are many other types of nexus triggers.



According to SCOTUS, South Dakota's law "affords small merchants a reasonable degree of protection," in part because:

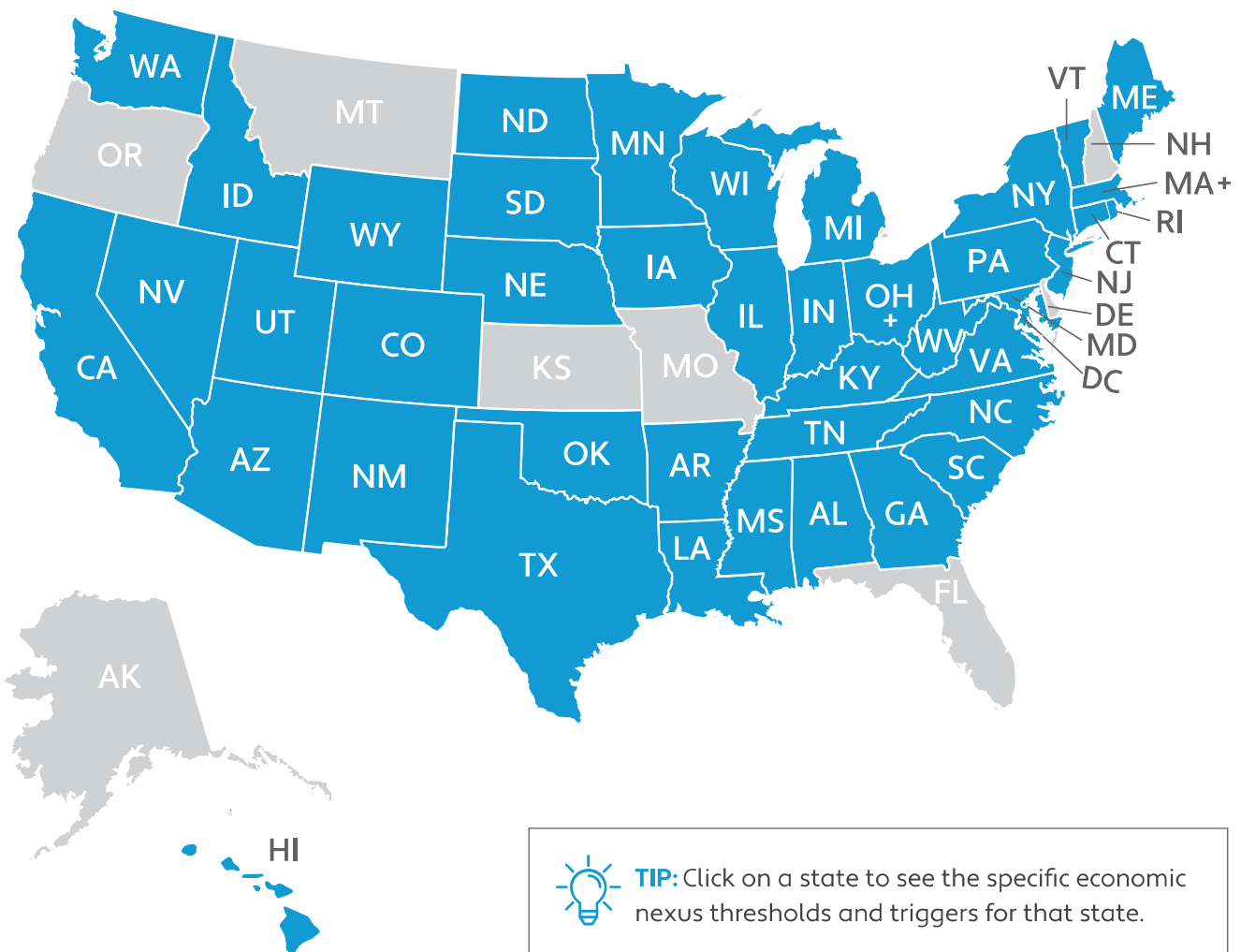
- It requires a merchant to collect the tax only if it does a considerable amount of business in the state
- It ensures no obligation to remit sales tax may be applied retroactively
- South Dakota is a member of the Streamlined Sales and Use Tax Agreement and has taken steps to simplify compliance and reduce costs for businesses



As mentioned, economic nexus criteria vary by state. The map below illustrates all the various states that have economic nexus laws as of July 1, 2019. To get an even better understanding of economic nexus laws and how individual states are defining and addressing them, visit our [state-by-state guide to economic laws](#).

STATES WITH ECONOMIC NEXUS LAWS

(As of July 1, 2019)



The above map is always subject to change. And it should be noted that economic nexus policies aren't the only way states are striving to capture tax revenue from remote sellers.